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CLERK U.S. DISTRICT COURT
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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 GERALD BASTON, Derivatively on
12 Behalf of QUESTCOR
13 PHARMACEUTICALS, INC.,

14 Plaintiff,

15 v.

16 DON M. BAILEY, MICHAEL H.
17 MULROY, STEPHEN L. CARTT,
18 DAVID YOUNG, VIRGIL D.
19 THOMPSON, MITCHELL J.
20 BLUTT, MD, NEAL C.
21 BRADSHAW, STEPHEN C.
22 FARRELL, LOUIS E.
23 SILVERMAN, and SCOTT M.
24 WHITCUP, MD,

25 Defendants,

26 -and-

27 QUESTCOR
28 PHARMACEUTICALS, INC., a
California corporation,

Nominal Defendant.

Case No.: SACV12 - 01716 DOC (JPRx)

VERIFIED SHAREHOLDER
DERIVATIVE COMPLAINT

JURY TRIAL DEMANDED

Verified Shareholder Derivative Complaint

BY FAX

1 By and through his undersigned counsel, Plaintiff Gerald Easton
2 (“Plaintiff”) brings this shareholder derivative action on behalf of QUESTCOR
3 PHARMACEUTICALS, INC., (“Questcor” or the “Company”) and against
4 certain current and former officers and directors of the Company for breaches of
5 fiduciary duties, unjust enrichment, and aiding and abetting thereof. Plaintiff
6 makes these allegations upon personal knowledge as to those allegations
7 concerning Plaintiff and, as to all other matters, upon the investigation of
8 counsel, which included, without limitation: a) review and analysis of public
9 filings made by Questcor and other related parties and non-parties with the U.S.
10 Securities and Exchange Commission (“SEC”); b) review and analysis of press
11 releases and other publications disseminated by certain of the Defendants and
12 other related non-parties; c) review of news articles, shareholder
13 communications, postings on Questcor’s website concerning the Company’s
14 public statements; and d) review of other publicly available information
15 concerning Questcor and the Individual Defendants (defined herein).

21 INTRODUCTION

22 1. Questcor is a pharmaceutical company based on, in effect, a single
23 product. The Company’s core product, H.P. Acthar Gel (Repository
24 Corticotropin Injection) (“Acthar”), provides over 90% of the Company’s
25 revenues.
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1 2. Acthar is an injectable drug that has been in use since the 1950's.
2 Over time, Acthar has received approvals by the U. S. Food and Drug
3 Administration ("FDA") for use in the treatment of 19 different conditions
4 including multiple sclerosis ("MS"), nephrotic syndrome (a kidney condition),
5 and infantile spasms.
6

7
8 3. Questcor acquired the rights to Acthar in 2001 for \$100,000. At the
9 time, Acthar was used almost exclusively to treat infantile spasms. The drug had
10 enjoyed some popularity in the 1970's as a treatment for M.S., but had been
11 largely abandoned for this purpose as less expensive and more powerful
12 corticosteroids became the preferred treatment for the condition.
13

14 4. From April 26, 2011 to September 21, 2012, (the "Relevant
15 Period"), as discussed further below, the Individual Defendants caused the
16 Company to embark on a massive and concerted effort to re-market Acthar for
17 other conditions for which it had historically been approved, despite an absence
18 of clinical verification that it was effective or cost-effective for those conditions.
19

20 5. That marketing effort, which has now come under scrutiny by
21 federal authorities for allegedly improper or illegal practices, worked. Company
22 revenues skyrocketed, and the Company's share price rose in response to both
23 the Company's short-term financial performance and the numerous misleading
24 public statements the Individual Defendants made, authorized, or failed to
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1 correct, that predicted accelerating growth in deployment of its core product
2 Acthar into additional markets and applications.

3
4 6. What the Individual Defendants did not disclose, however, was that
5 the Company did not have clinical evidence that Acthar was superior, or even
6 cost-effective, when compared with other available treatments for 18 of the 19
7 indications for which the drug was approved.
8

9 7. Specifically, during the Relevant Period, the Individual Defendants
10 violated the federal securities laws by disseminating false and misleading
11 statements to the investing public about the effectiveness of Acthar as a treatment
12 for MS, for nephrotic syndrome, and for other conditions, and by causing the
13 Company to do so, making it impossible for shareholders to gain a meaningful or
14 realistic understanding of the Company's prospects for market success. As a
15 result of these false statements, Questcor's stock traded at artificially inflated
16 prices during the Relevant Period, reaching a high of \$57.64 per share on July 9,
17 2012.
18
19
20

21 8. On September 19, 2012, Citron Research, a research entity unrelated
22 to Questcor, disclosed that Aetna Inc. ("Aetna"), one of the nation's largest
23 insurers, had determined that it would no longer reimburse prescriptions for
24 Acthar for 18 of the 19 conditions for which the drug had been approved.
25

26 9. Aetna announced in a clinical policy bulletin that the available
27 clinical research indicated the drug is only "medically necessary" for one of its
28

1 19 approved conditions: West syndrome, a rare condition that causes infantile
2 spasms. For other conditions such as MS that are treated with steroids, Aetna
3 found that Acthar was “not medically necessary because there is no clinical
4 evidence that the drug is more effective than steroids.”
5

6 10. On this news, Questcor’s stock plummeted \$24.17 per share to close
7 at \$26.35 per share on September 19, 2012, a one-day decline of 48% on high
8 volume.
9

10 11. Later on September 19, 2012, in response to news of the insurer’s
11 finding, the Company issued a press release stating:
12

13 “Currently the Company does not believe that the [Aetna] bulletin
14 represents a material change in insurance coverage for Acthar by
15 Aetna. During 2012, Aetna has accounted for approximately 5% of
16 the Company's shipped prescriptions for Acthar. Based on its current
17 assessment of the Clinical Policy Bulletin, the Company does not
18 believe that the bulletin will have a material impact on the
19 Company's results of operations.”
20
21

22 12. Investors were at least partially reassured by this statement, as the
23 stock price recovered approximately 20% in the following days.
24

25 13. Then, on September 24, 2012, Questcor announced in a Form 8-K
26 filed with the SEC that the U.S. Government had initiated an investigation into
27 the Company’s marketing and promotional practices.
28

1 14. After this news, Questcor's stock dropped \$11.05 per share to close
2 at \$19.08 per share on September 24, 2012, a one-day decline of 37% on high
3 volume.
4

5 15. The dramatic run-up in the Company's share price, which came to a
6 crashing halt when the true facts were disclosed, was a result of the Individual
7 Defendants' deliberately misleading statements and practices. The true facts,
8 which were known by the Individual Defendants but concealed from the
9 investing public during the Relevant Period, were as follows:
10

11 (a) the Individual Defendants lacked clinical evidence to support the use of
12 Acthar for any indications other than infantile spasms.
13

14 (b) the Individual Defendants had engaged in or caused the Company to
15 engage in questionable tactics to promote the sale and use of Acthar in the
16 treatment of MS and nephrotic syndrome.
17

18 (c) the Individual Defendants lacked a reasonable basis to make positive
19 statements about the Company or its outlook, including statements about the
20 effectiveness of and potential market growth for Acthar.
21

22 16. As a result of the Individual Defendants' false public statements and
23 improper practices, Questcor stock traded at artificially inflated levels during the
24 Relevant Period. However, after the above revelations seeped into the market,
25 the Company's share price plummeted, losing 67% of its value from the period
26 high.
27
28

1 17. Plaintiff, a shareholder of Questcor, therefore brings this
2 shareholder derivative lawsuit against the Individual Defendants for breaching
3 their fiduciary duties to the Company by issuing false and misleading statements
4 and by causing and failing to disclose the improper practices during the Relevant
5 Period.
6

7
8 18. The Questcor Board of Directors ("Board") has not and will not
9 commence litigation against the Individual Defendants, let alone vigorously
10 prosecute such claims, because they face a substantial likelihood of liability to
11 Questcor for authorizing or failing to correct the false and misleading statements
12 and improper practices alleged herein. Accordingly, a pre-suit demand upon the
13 Questcor Board is a useless and futile act. Thus, Plaintiff rightfully brings this
14 action to vindicate Questcor's rights against its wayward fiduciaries and hold
15 them responsible for the damages they have caused Questcor.
16
17

18 **JURISDICTION AND VENUE**

19 19. Jurisdiction is conferred by 28 U.S.C § 1332. There is complete
20 diversity among the parties and the amount in controversy exceeds the sum or
21 value of \$75,000, exclusive of interest and costs.
22

23 20. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because
24 Questcor maintains its principal executive offices in this district, one or more of
25 the Individual Defendants reside in this district, a substantial portion of the
26 transactions and wrongs complained of herein -- including the Individual
27
28

1 Defendants' primary participation in the wrongful acts detailed herein – occurred
2 in this district, and the Individual Defendants have received substantial
3 compensation in this district by doing business here and engaging in numerous
4 activities that had an effect in this district.
5

6 **THE PARTIES**

7
8 21. Plaintiff has been a shareholder of common stock of Questcor at all
9 times during the wrongdoing complained of herein and continues to hold shares
10 in the Company. Plaintiff is a citizen of Ohio.

11
12 22. Nominal Defendant Questcor is a California corporation with its
13 principal offices located at 1300 North Kellogg Drive, Suite D, Anaheim Hills,
14 California 92087. Questcor is publically-traded on the NASDAQ exchange with
15 trading symbol QCOR. As of October 1, 2012, Questcor had approximately
16 61.11 million common shares outstanding.
17

18 23. Defendant Don M. Bailey ("Bailey") is, and at all relevant times
19 was, the Company's Chief Executive Officer ("CEO"), President and a director.
20 During the Relevant Period, defendant Bailey sold 440,000 shares of his
21 Questcor stock for proceeds of over \$17.7 million. Bailey is a citizen of
22 California.
23
24

25 24. Defendant Michael H. Mulroy ("Mulroy") is, and at all relevant
26 times was, the Company's Chief Financial Officer ("CFO"), Senior Vice
27 President and General Counsel. Mulroy is a citizen of California.
28

1 25. Defendant Stephen L. Cartt ("Cartt") is, and at all relevant times
2 was, the Company's Chief Operating Officer ("COO"). During the Relevant
3 Period, defendant Cartt sold 505,509 shares of his Questcor stock for proceeds of
4 over \$16.2 million. Cartt is a citizen of California.
5

6 26. Defendant David Young ("Young") is, and at all relevant times was,
7 the Company's Chief Scientific Officer. During the Relevant Period, defendant
8 Young sold 175,124 shares of his Questcor stock for proceeds of nearly \$7.1
9 million. Young is a citizen of California.
10

11 27. Defendant Virgil D. Thompson ("Thompson") is the Chairman of
12 the Board, having joined the Board in January 1996. Thompson is a member of
13 the Audit Committee, the Compensation Committee, and the Compliance
14 Committee. During the Relevant Period, Thompson sold 167,500 shares for
15 proceeds of over \$ 3.4 million. Thompson is a citizen of California.
16

17 28. Defendant Mitchell J. Blutt, MD ("Blutt") is a Director of the
18 Company. Blutt has been a director since 2010. Blutt is a member of the Audit
19 Committee. During the Relevant Period, Blutt sold 636,255 shares for proceeds
20 of over \$ 21.4 million. Blutt is a citizen of New York.
21

22 29. Defendant Neal C. Bradsher ("Bradsher") is a director of the
23 Company. Bradsher joined the Company's Board in March 2004. Bradsher is a
24 citizen of New York.
25
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1 30. Defendant Stephen C. Farrell ("Farrell") is a director of the
2 Company. Farrell joined the Company's Board in November 2007. Farrell is a
3 member of the Audit Committee, the Compensation Committee, and the
4 Compliance Committee. During the Relevant Period, Farrell sold 25,000 shares
5 for proceeds of over \$ 1.0 million. Farrell is a citizen of Massachusetts.
6

7
8 31. Defendant Louis E. Silverman ("Silverman") is a director of the
9 Company. Silverman joined the Company's Board in December, 2009.
10 Silverman is a member of the Compliance Committee. Silverman is a citizen of
11 California.
12

13 32. Defendant Scott M. Whitcup ("Whitcup") is a director of the
14 Company. Whitcup is a member of the Compliance Committee. Whitcup is a
15 citizen of Illinois.
16

17 33. The defendants named above in ¶¶23-32 are referred to herein as the
18 "Individual Defendants."
19

20 34. The Individual Defendants, because of their positions with the
21 Company, possessed the power and authority to control the contents of
22 Questcor's quarterly reports, press releases and presentations to securities
23 analysts, money and portfolio managers and institutional investors, and therefore
24 to the investment market. They were provided with copies of the Company's
25 reports and press releases alleged herein to be misleading prior to or shortly after
26 their issuance and had the ability and opportunity to prevent their issuance or
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1 cause them to be corrected. Because of their positions with the Company, and
2 their access to material non-public information available to them but not to the
3 public, the Individual Defendants knew that the adverse facts specified herein
4 had not been disclosed to and were being concealed from the public and that the
5 positive representations being made were then materially false and misleading.
6
7 The Individual Defendants are liable for the false statements pleaded herein.
8

9 SUBSTANTIVE ALLEGATIONS

10 *The Individual Defendants Made or Allowed False and Misleading Statements*
11 *and Violated their Fiduciary Duties During the Relevant Period*

12 35. On April 26, 2011, the Individual Defendants caused Questcor to
13 issue a press release announcing its first quarter 2011 financial results. The
14 Company reported net income of \$11.2 million, or \$0.17 diluted earnings per
15 share ("EPS"), and net sales of \$36.8 million for the first quarter of 2011.
16

17 36. Defendant Bailey made several false and misleading statements in
18 the press release which stated in part:
19

20 "Our strategy to expand the sales force is clearly paying off," said
21 Don M. Bailey, President and CEO of Questcor. "Paid MS
22 prescriptions are up sharply from last quarter. March was a
23 particularly strong month and this momentum has continued so far in
24 April. We believe that Acthar is filling an increasingly important role
25 in the treatment of exacerbations associated with MS and, looking
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1 forward, we expect to continue to grow sales in this important
2 therapeutic area.” Mr. Bailey added, “We are also encouraged by the
3 early positive results from our small, dedicated nephrology sales
4 team, which initiated selling efforts at the beginning of March. The
5 number of nephrologists who are using Acthar to treat patients with
6 nephrotic syndrome is increasing.”
7
8

9 37. After the Individual Defendants caused Questcor to issue its first
10 quarter 2011 financial results on April 26, 2011, the Individual Defendants
11 hosted a conference call for analysts, media representatives and investors.
12

13 38. During the call, certain of the Individual Defendants reiterated the
14 record financial results reported in the Company’s press release and defendant
15 Mulroy discussed the Company’s financial performance in depth. Defendants
16 Bailey and Cartt further presented prepared statements at the conference call and
17 represented as follows:
18
19

20 [BAILEY:] In summary, we are off to a very good start this year as
21 we continue to execute our straightforward strategy to sell more
22 Acthar. Our decision to expand the MS sales force is clearly paying
23 off. Also, our nephrotic syndrome sales force is having some early
24 success.
25

26 * * *
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1 We believe this MS sales performance reflects the strong, underlying
2 demand for Acthar. This growth in demand is being driven by the
3 increasing productivity of our expanded sales force. We believe net
4 sales in the MS market are now about 60% of total Acthar net sales.
5

6 * * *

7
8 [CARTT:] Our expanded promotional activities directed to
9 neurologists generated significant growth in Acthar prescriptions for
10 MS during the first quarter. During the quarter we shipped a record
11 508 paid Acthar prescriptions for the treatment of MS relapses. This
12 was an increase of 120% over the year ago period and 44% over the
13 previous quarter. We believe this performance is a strong signal that
14 the sales force expansion has gained traction in the MS market at a
15 faster rate than we expected.
16

17 * * *

18
19 Our promotional efforts are increasingly focused on two main
20 goals. One, convincing an increasing number of prescribers about the
21 benefits of using Acthar with their patients and two, helping doctors,
22 nurses and others in their medical practice become more effective at
23 identifying potential Acthar patients.
24

25 * * *

1 In addition to increased promotion by our sales reps, Acthar
2 sales are benefiting from our sponsored physician speaker programs.
3
4 In these programs existing Acthar prescribers present to small groups
5 of physicians their experiences using Acthar and the published
6 efficacy and safety data for Acthar in MS relapses. When combined
7
8 with followup sales calls, these programs appear to be a key driver of
9 our sales growth. Recently we've been significantly increasing the
10 number of speaker programs being conducted and expect to continue
11 doing so in the future.

12
13 39. On July 26, 2011, the Individual Defendants caused Questcor to
14 issue a press release announcing its second quarter 2011 financial results. The
15 Company reported net income of \$13.9 million, or \$0.21 diluted EPS, and net
16 sales of \$46.0 million for the second quarter of 2011. The release stated in part:

17
18 "Clearly, Questcor had a terrific quarter," said Don M. Bailey,
19 President and CEO of Questcor. "Our focus on expanding the use of
20 Acthar in the treatment of MS exacerbations drove our record second
21 quarter financial performance. Importantly, in spite of the rapid
22 expansion in the use of Acthar for MS exacerbations, we believe that
23 the prescriber base can continue to grow. Accordingly, growing MS
24 sales remains our number one priority. Also, following our early
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1 success in nephrotic syndrome, we are immediately and substantially
2 expanding our nephrology selling effort.”

3
4 40. On June 14, 2012, the Individual Defendants caused the Company
5 to issue a press release touting the prospects for the further commercialization of
6 its star product Acthar. The press release stated, in relevant part:

7
8 Questcor Pharmaceuticals, Inc. (NASDAQ: QCOR) today announced
9 key elements of the Company's initial commercialization plans for
10 H.P. Acthar® Gel (repository corticotropin injection) in the treatment
11 of rheumatology-related indications already included on the FDA-
12 approved package insert for Acthar.
13

14
15 Acthar is indicated for multiple FDA-approved rheumatology-related
16 conditions, including its use as adjunctive therapy in psoriatic
17 arthritis, rheumatoid arthritis, juvenile rheumatoid arthritis, and
18 ankylosing spondylitis. Acthar is also approved by the FDA as acute
19 or maintenance therapy in selected cases of systemic lupus
20 erythematosus and systemic dermatomyositis (polymyositis). The
21 Company believes Acthar has the potential to help patients suffering
22 from these serious, difficult-to-treat disorders who do not respond
23 adequately to, or experience problematic side effects from, current
24 treatments.
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1
2 Questcor's initial commercial plans for Acthar in rheumatology
3 include the following:
4

- 5 - Creation of a Rheumatology Sales Force with 12 experienced
6 rheumatology reps, a national sales director and two regional sales
7 managers;
8
- 9 - Commencement of a pilot rheumatology selling effort in mid-July
10 2012 with an initial focus on the rare and closely related
11 neuromuscular disorders dermatomyositis (DM) and polymyositis
12 (PM);
13
- 14 - Potential expansion of the Rheumatology Sales Force following
15 evaluation of results from the pilot effort;
16
- 17 - Potential roll-out in late 2012 of a DM/PM selling effort by Questcor's
18 current Neurology Sales Force to as many as 1,000 neurologists
19 specializing in neuromuscular disease.
20

21
22 Furthermore, Questcor will support creation of a patient registry for
23 Acthar in DM/PM and will actively work to help gather clinical data
24 in systemic lupus erythematosus, rheumatoid arthritis and psoriatic
25 arthritis.
26
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1 "As we have previously stated, there are significant opportunities to
2 enter markets where Acthar has FDA approval beyond our three key
3 markets within nephrology, multiple sclerosis and infantile spasms,"
4 said Don M. Bailey, President and Chief Executive Officer of
5 Questcor. "We are excited about the potential for Acthar to help an
6 increasing number of patients with serious, difficult-to-treat
7 autoimmune and inflammatory disorders who are in need of
8 additional treatment options. Our commercialization launch plans for
9 Acthar Rheumatology indications replicate the model we have
10 successfully used to help patients afflicted with MS and certain types
11 of nephrotic syndrome."
12

13 * * *

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16
17 "While DM/PM will be the initial focus of our pilot
18 Rheumatology Sales Force, we believe that with Acthar also being
19 FDA-approved for the treatment of SLE, RA and psoriatic arthritis, a
20 total of five Acthar indications related to rheumatology could become
21 commercially viable within the next 24 months," commented Steve
22 Cartt, Chief Operating Officer of Questcor. "Each of these five FDA-
23 approved, Acthar indications appear to have significant revenue
24 potential due to the high unmet need evident in these therapeutic
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1 areas. The commercialization of each of these indications has the
2 potential to significantly add to Questcor shareholder value."

3
4 41. In an April, 24, 2012 conference call for analysts and investors,
5 Defendant Young, stated "... Acthar can truly be considered a pipeline within a
6 drug. While quite rare, there are, in effect, few other successful examples of the
7 type of product. Soliris and Botox come to mind, for example. We have a
8 significant opportunity with Acthar to expand use from our three existing
9 markets . . . to other markets that are part of the list of 19 approved on-label
10 indications."
11

12
13 42. These, as well as other similar statements disseminated by the
14 Individual Defendants during the Relevant Period, were materially misleading
15 because they failed to disclose that Questcor lacked reliable clinical evidence of
16 Acthar's efficacy or cost-effectiveness in these additional applications. The
17 statements also failed to disclose that the Company's apparent success in
18 marketing the drug hinged on its allegedly improper marketing practices. All of
19 this information was available to the Individual Defendants but was not disclosed
20 to investors.
21

22
23
24 43. Certain of the Individual Defendants have caused the Company to
25 assert on its official website that "Questcor's Compliance Program strives to
26 ensure that the consequences of violating the law or company policy are clearly
27 understood and the appropriate, consistent disciplinary action is enforced.
28

1 Additional efforts are underway to create a Compliance Program that increases
2 the likelihood that unlawful and unethical behavior is identified and prevented. . .
3 . As such, our Compliance Program requires the company to evaluate each case
4 and respond promptly to potential violations of law or company policy, take
5 appropriate disciplinary action, assess whether the violation is in part due to gaps
6 in our policies, practices, or internal controls, and take action to prevent future
7 violations.”
8
9

10 44. Further, Questcor’s website alleges regarding the Company sales
11 and marketing practices that, “...all of our sales representatives receive extensive
12 training on how to conduct themselves before they go out into the field to call on
13 physicians and other healthcare providers. Questcor has also developed rigorous
14 internal procedures governing how we produce and utilize promotional and
15 educational materials.”
16
17

18 45. Questcor’s “rigorous internal procedures,” if they exist at all,
19 apparently failed to detect or even respond to the misleading public statements or
20 the questionable marketing practices that are the subject of the announced
21 government investigation.
22
23

24 **INSIDER SELLING ALLEGATIONS**

25 46. Individual Defendants Bailey, Blutt, Cartt, Farrell, Thompson, and
26 Young all sold their shares in Questcor during the Relevant Period, realizing
27 substantial proceeds from the artificially-inflated share prices during this period.
28

1 47. These Individual Defendants' sales of Questcor stock were made on
2 the basis of material, nonpublic information regarding the clinical data, efficacy,
3 and cost-effectiveness, and the Company's marketing practices for Acthar, such
4 that these Individual Defendants received a material benefit that other
5 shareholders, not privy to that information, did not receive.
6

7 **DUTIES OF THE INDIVIDUAL DEFENDANTS**

8 Fiduciary Duties

9 48. By reason of their positions as officers, directors, and/or fiduciaries
10 of Questcor and because of their ability to control the business and corporate
11 affairs of Questcor, the Individual Defendants owed and owe the Company and
12 its shareholders fiduciary obligations of trust, loyalty, good faith, and due care,
13 and were and are required to use their utmost ability to control and manage
14 Questcor in a fair, just, honest, and equitable manner. The Individual Defendants
15 were and are required to act in furtherance of the best interests of Questcor and
16 its shareholders so as to benefit all shareholders equally and not in furtherance of
17 their personal interest or benefit.
18

19 49. Each director and officer of the Company owes to Questcor and its
20 shareholders the fiduciary duty to exercise good faith and diligence in the
21 administration of the affairs of the Company and in the use and preservation of
22 its property and assets, and the highest obligations of fair dealing. In addition, as
23 officers and/or directors of a publicly held company, the Individual Defendants
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1 had a duty to promptly disseminate accurate and truthful information with regard
2 to the Company's operations, performance, management, projections, and
3 forecasts so that the market price of the Company's stock would be based on
4 truthful and accurate information.
5

6 Duties of the Audit Committee
7

8 50. In addition to these fiduciary duties, the members of the Audit
9 Committee owed specific duties to Questcor under the Audit Committee's
10 Charter. In particular, the Audit Committee's Charter requires the Audit
11 Committee to assist the Board with its oversight responsibilities regarding: (a)
12 the integrity of the Company's financial statements; and (b) the Company's
13 compliance with legal and regulatory requirements.
14
15

16 51. Audit Committee duties further include that:

17 The Committee shall review and discuss the quarterly financial
18 statements with management and the external auditor, including the
19 Company's disclosures under "Management's Discussion and
20 Analysis of Financial Condition and Results of Operations."
21
22

23
24 The Committee, through its Chair, shall report regularly to, and
25 review with, the Board any issues that arise with respect to the
26 quality or integrity of the Company's financial statements, the
27 Company's compliance with legal or regulatory requirements, the
28

1 performance and independence of the Company's external auditor, or
2 any other matter the Committee determines is necessary or advisable
3 to report to the Board.
4

5 Duties of the Compliance Committee

6 52. The Individual Defendants who are members of Questcor's
7 Compliance Committee owe additional fiduciary duties to the Company.
8

9 53. According to the Company's charter, the purpose of the Compliance
10 Committee is to assist the Board with its oversight of significant healthcare
11 related compliance and regulatory issues.
12

13 54. Specific duties required to be carried out by the Compliance
14 Committee members include:
15

16 - Review and oversee the Company's Compliance Program, including but
17 not limited to, evaluating its effectiveness and receiving updates about the
18 activities of the Chief Compliance Officer and other compliance
19 personnel.
20

21 - Review the status of the Company's compliance with relevant laws,
22 regulations, and internal procedures (e.g., compliance with U.S. federal
23 healthcare program requirements; compliance with U.S. pharmaceutical
24 product promotional rules and regulations, including with respect to "off-
25 label" and other product promotional activities, unapproved product uses,
26 fair balance, product safety claims, and product superiority or efficacy
27
28

1 claims; product manufacturing quality control; clinical studies quality
2 control; and required reporting to the Food and Drug Administration
3 ("FDA")). The Audit Committee of the Company's Board of Directors
4 shall continue to assist the Board with its oversight responsibilities
5 regarding the integrity of the Company's financial statements and the
6 Company's compliance with legal and regulatory requirements generally.
7

8
9 - Review and evaluate internal reports and external data to assess whether
10 there are significant concerns regarding the Company's regulatory and/or
11 compliance practices, including:
12

13 - Receive details and factual reports on relevant government
14 investigations, including the conduct at issue and whether it reflects a
15 regulatory or compliance issue at the Company.
16

17 * * *

18 At least annually, receive all FDA warning letters and the responses to
19 such letters, as well as a report on the steps taken to implement the
20 responses and an evaluation of whether the letters, as responded to by the
21 Company, raise any healthcare related regulatory and compliance issues.
22

23 * * *

24
25 The Committee shall report at least annually to the Board of Directors on
26 (i) the state of the Company's compliance functions, (ii) relevant
27 compliance issues involving the Company of which the Committee has
28

1 been made aware, including a summary of the results of any compliance
2 investigations conducted by the Company, (iii) any potential patterns of
3 non-compliance identified within the Company, (iv) any significant
4 disciplinary actions against any compliance personnel, and (v) any other
5 issues that may reflect any systemic or widespread problems in
6 compliance or regulatory matters exposing the Company to substantial
7 compliance risk. In advance of such report, the Committee and the Audit
8 Committee, either through their respective Chairs or otherwise, shall
9 confer on any matters of mutual interest in light of their respective
10 responsibilities.
11

12 Control, Access, and Authority
13

14 55. The Individual Defendants, because of their positions of control and
15 authority as directors and/or officers of Questcor, were able to and did, directly
16 and/or indirectly, exercise control over the wrongful acts complained of herein,
17 as well as the contents of the various public statements issued by Questcor.
18

19 56. Because of their advisory, executive, managerial, and directorial
20 positions with Questcor, each of the Individual Defendants had access to adverse,
21 non-public information about the financial condition, operations, and improper
22 representations of Questcor.
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1 57. At all times relevant hereto, each of the Individual Defendants was
2 the agent of each of the other Individual Defendants and of Questcor, and was at
3 all times acting within the course and scope of such agency.
4

5 Reasonable and Prudent Supervision

6 58. To discharge their duties, the officers and directors of Questcor
7 were required to exercise reasonable and prudent supervision over the
8 management, policies, practices and controls of the financial affairs of the
9 Company. By virtue of such duties, the officers and directors of Questcor were
10 required to, among other things:
11
12

13 (a) ensure that the Company complied with its legal obligations and
14 requirements, including acting only within the scope of its legal authority and
15 disseminating truthful and accurate statements to the investing public;
16

17 (b) conduct the affairs of the Company in an efficient, business-like
18 manner so as to make it possible to provide the highest quality performance of its
19 business, to avoid wasting the Company's assets, and to maximize the value of
20 the Company's stock;
21

22 (c) properly and accurately guide investors and analysts as to the true
23 financial condition of the Company at any given time, including making accurate
24 statements about the Company's financial results;
25

26 (d) remain informed as to how Questcor conducted its operations, and,
27 upon receipt of notice or information of imprudent or unsound conditions or
28

1 practices, make reasonable inquiry in connection therewith, and take steps to
2 correct such conditions or practices and make such disclosures as necessary to
3 comply with securities laws; and
4

5 (e) ensure that Questcor was operated in a diligent, honest, and prudent
6 manner in compliance with all applicable laws, rules, and regulations.
7

8 **BREACHES OF DUTIES**

9 59. Each of the Individual Defendants, by virtue of his or her position as
10 a director and/or officer, owed to Questcor and to its shareholders the fiduciary
11 duty of loyalty and good faith and the exercise of due care and diligence in the
12 management and administration of the affairs of Questcor, as well as in the use
13 and preservation of its property and assets. The conduct of the Individual
14 Defendants complained of herein involves a knowing and culpable violation of
15 their obligations as directors and officers of Questcor, the absence of good faith
16 on their part, and a reckless disregard for their duties to Questcor and its
17 shareholders that the Individual Defendants were aware or should have been
18 aware posed a risk of serious injury to Questcor.
19
20
21

22 60. The Individual Defendants breached their fiduciary duties to
23 investors by implementing and/or approving improper marketing practices, by
24 concealing and failing to timely disclose the risks of these marketing practices,
25 and by issuing false and misleading public announcements regarding the
26 Company's prospects.
27
28

1 61. The Individual Defendants each further breached their duty of
2 loyalty and good faith by allowing other of the Individual Defendants to cause,
3 or by themselves causing, the Company to make false and/or misleading
4 statements that misled shareholders into believing that Questcor's success with
5 and future prospects for Acthar were based on reliable clinical data and proper
6 marketing practices, and by failing to correct these statements after they were
7 made.
8

9
10 **CONSPIRACY, AIDING AND ABETTING, AND CONCERTED**
11 **ACTION**

12 62. In committing the wrongful acts alleged herein, the Individual
13 Defendants have pursued, or joined in the pursuit of, a common course of
14 conduct, and have acted in concert with and conspired with one another in
15 furtherance of their wrongdoing. The Individual Defendants further aided and
16 abetted and/or assisted each other in breaching their respective duties.
17

18 63. During all times relevant hereto, the Individual Defendants
19 collectively and individually initiated a course of conduct that was designed to
20 mislead shareholders into believing that Questcor was successfully diversifying
21 into new businesses while increasing revenues and market share in its traditional
22 switching and router businesses and that its new organizational structure was
23 operating successfully. In furtherance of this plan, conspiracy, and course of
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1 conduct, the Individual Defendants collectively and individually took the actions
2 set forth herein.

3
4 64. The purpose and effect of the Individual Defendants' conspiracy,
5 common enterprise, and/or common course of conduct was, among other things,
6 to: (a) disguise the Individual Defendants' violations of law, including breaches
7 of fiduciary duty and unjust enrichment; and (b) disguise and misrepresent the
8 Company's future business prospects.

9
10 65. The Individual Defendants accomplished their conspiracy, common
11 enterprise, and/or common course of conduct by causing the Company to
12 purposefully, recklessly, or negligently issue false and misleading statements.
13 Because the actions described herein occurred under the authority of the Board,
14 each of the Individual Defendants was a direct, necessary, and substantial
15 participant in the conspiracy, common enterprise, and/or common course of
16 conduct complained of herein.

17
18 66. Each of the Individual Defendants aided and abetted and rendered
19 substantial assistance in the wrongs complained of herein. In taking such actions
20 to substantially assist the commissions of the wrongdoing complained of herein,
21 each Individual Defendant acted with knowledge of the primary wrongdoing,
22 substantially assisted the accomplishment of that wrongdoing, and was aware of
23 his or her overall contribution to and furtherance of the wrongdoing.
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DAMAGES TO QUESTCOR

67. As a result of the Individual Defendants' wrongful conduct, Questcor adopted improper marketing strategies and practices. The Individual Defendants' further caused Questcor to disseminate false and misleading statements which concealed the truth from investors, which resulted in increased damages to Questcor. The losses and improper statements have devastated Questcor's credibility. Additionally, Questcor is the subject of a securities fraud class action lawsuit. The Company will face substantial costs in connection with an investigation and the lawsuit.

68. As a direct and proximate result of the Individual Defendants' actions as alleged above, Questcor's market capitalization has been substantially damaged.

69. Further, as a direct and proximate result of the Individual Defendants' conduct, Questcor has expended and will continue to expend significant sums of money. Such expenditures include, but are not limited to:

(a) costs incurred in investigating and defending Questcor and certain officers in a government regulatory investigation, the federal class action lawsuit, plus potentially hundreds of millions of dollars in settlement or to satisfy adverse criminal and/or civil judgments;

(b) costs incurred from compensation and benefits paid to the Individual Defendants, which compensation was based at least in part

1 on Questcor's artificially-inflated stock price and inflated revenues;
2 and

3 (c) costs incurred from the loss of the Company's customers'
4 confidence in Questcor's services.
5

6 70. Moreover, these actions have irreparably damaged Questcor's
7 corporate image and goodwill. For at least the foreseeable future, Questcor will
8 suffer from what is known as the "liar's discount," a term applied to the stocks of
9 companies who have been implicated in illegal behavior and have misled the
10 investing public, such that Questcor's ability to raise equity capital or debt on
11 favorable terms in the future is already impaired.
12
13

14 **DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

15 71. Plaintiff brings this action derivatively in the right and for the
16 benefit of Questcor to redress injuries suffered, and to be suffered, by Questcor
17 as a direct result of the Individual Defendants' breaches of fiduciary duty and
18 unjust enrichment, as well as the aiding and abetting thereof, by the Individual
19 Defendants. Questcor is named as a nominal defendant solely in a derivative
20 capacity.
21
22

23 72. Plaintiff will adequately and fairly represent the interests of
24 Questcor in enforcing and prosecuting its rights.
25

26 73. Plaintiff was a shareholder of Questcor at the time of the
27 wrongdoing of which Plaintiff complains and has been continuously since.
28

1 74. Plaintiff did not make a pre-suit demand on the Board to pursue this
2 action, because such a demand would have been a futile and wasteful act.

3
4 75. The Board of Questcor currently consists of the following seven
5 defendants: Thompson, Bailey, Blutt, Bradsher, Farrell, Silverman, and Whitcup.
6 Demand is futile as to each of them for the following reasons.

7
8 76. Demand is futile as to Defendant Thompson, because Thompson
9 faces a substantial likelihood of liability for his individual misconduct.
10 Thompson, as Chairman of the Board and as a member of the Audit,
11 Compensation, and Compliance Committees, knew of the false and misleading
12 statements regarding Acthar's efficacy and cost-effectiveness, and either knew or
13 with reasonable diligence should have known about the improper marketing
14 practices, and did nothing to stop those practices or establish systems to prevent
15 them. Defendant Thompson was a director throughout the Relevant Period, and
16 as such had a fiduciary duty to ensure that the Company's public filings with the
17 SEC, press releases, and other public statements on behalf of the Company were
18 true. Instead, he reviewed and authorized the publication of materially false and
19 misleading statements throughout the Relevant Period that caused the
20 Company's stock to trade at artificially inflated prices. This authorization of
21 such statements and/or failure to correct them constitutes a breach of fiduciary
22 duty, for which Defendant Thompson faces a substantial likelihood of liability.
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1 77. Demand is futile as to Defendant Bailey, because Bailey faces a
2 substantial likelihood of liability for his individual misconduct. Bailey, as
3 President and CEO of the Company, and as a member of the Board, made false
4 and misleading statements and knew them to be false and misleading regarding
5 Acthar's efficacy and cost-effectiveness, and either knew or with reasonable
6 diligence should have known about the improper marketing practices, and either
7 encouraged or did nothing to stop those practices or establish systems to prevent
8 them. Defendant Bailey was a director throughout the Relevant Period, and as
9 such had a fiduciary duty to ensure that the Company's public filings with the
10 SEC, press releases, and other public statements on behalf of the Company were
11 true. Instead, he reviewed and authorized the publication of materially false and
12 misleading statements throughout the Relevant Period that caused the
13 Company's stock to trade at artificially inflated prices. This authorization of
14 such statements and/or failure to correct them constitutes a breach of fiduciary
15 duty, for which Defendant Bailey faces a substantial likelihood of liability.

16
17 78. Demand is futile as to Defendant Blutt, because Blutt faces a
18 substantial likelihood of liability for his individual misconduct. Blutt, as a Board
19 member and member of the Audit Committee, knew of the false and misleading
20 statements regarding Acthar's efficacy and cost-effectiveness, and either knew or
21 with reasonable diligence should have known about the improper marketing
22 practices, and did nothing to stop those practices or establish systems to prevent
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1 them. Defendant Blutt was a director throughout the Relevant Period, and as
2 such had a fiduciary duty to ensure that the Company's public filings with the
3 SEC, press releases, and other public statements on behalf of the Company were
4 true. Instead, he reviewed and authorized the publication of materially false and
5 misleading statements throughout the Relevant Period that caused the
6 Company's stock to trade at artificially inflated prices. This authorization of
7 such statements and/or failure to correct them constitutes a breach of fiduciary
8 duty, for which Defendant Blutt faces a substantial likelihood of liability.

9
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12 79. Demand is futile as to Defendant Bradsher, because Bradsher faces
13 a substantial likelihood of liability for his individual misconduct. Bradsher knew
14 of the false and misleading statements regarding Acthar's efficacy and cost-
15 effectiveness, and either knew or with reasonable diligence should have known
16 about the improper marketing practices, and did nothing to stop those practices
17 or establish systems to prevent them. Defendant Bradsher was a director
18 throughout the Relevant Period, and as such had a fiduciary duty to ensure that
19 the Company's public filings with the SEC, press releases, and other public
20 statements on behalf of the Company were true. Instead, he reviewed and
21 authorized the publication of materially false and misleading statements
22 throughout the Relevant Period that caused the Company's stock to trade at
23 artificially inflated prices. This authorization of such statements and/or failure to
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1 correct them constitutes a breach of fiduciary duty, for which Defendant
2 Bradsher faces a substantial likelihood of liability.

3
4 80. Demand is futile as to Defendant Farrell, because Farrell faces a
5 substantial likelihood of liability for his individual misconduct. Farrell, as a
6 member of the Audit and Compliance Committees, knew of the false and
7 misleading statements regarding Acthar's efficacy and cost-effectiveness, and
8 either knew or with reasonable diligence should have known about the improper
9 marketing practices, and did nothing to stop those practices or establish systems
10 to prevent them. Defendant Farrell was a director throughout the Relevant
11 Period, and as such had a fiduciary duty to ensure that the Company's public
12 filings with the SEC, press releases, and other public statements on behalf of the
13 Company were true. Instead, he reviewed and authorized the publication of
14 materially false and misleading statements throughout the Relevant Period that
15 caused the Company's stock to trade at artificially inflated prices. This
16 authorization of such statements and/or failure to correct them constitutes a
17 breach of fiduciary duty, for which Defendant Farrell faces a substantial
18 likelihood of liability.
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24 81. Demand is futile as to Defendant Silverman, because Silverman
25 faces a substantial likelihood of liability for his individual misconduct.
26 Silverman, as a member of the Compliance Committee, knew of the false and
27 misleading statements regarding Acthar's efficacy and cost-effectiveness, and
28

1 either knew or with reasonable diligence should have known about the improper
2 marketing practices, and did nothing to stop those practices or establish systems
3 to prevent them. Defendant Silverman was a director throughout the Relevant
4 Period, and as such had a fiduciary duty to ensure that the Company's public
5 filings with the SEC, press releases, and other public statements on behalf of the
6 Company were true. Instead, he reviewed and authorized the publication of
7 materially false and misleading statements throughout the Relevant Period that
8 caused the Company's stock to trade at artificially inflated prices. This
9 authorization of such statements and/or failure to correct them constitutes a
10 breach of fiduciary duty, for which Defendant Silverman faces a substantial
11 likelihood of liability.
12
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16 82. Demand is futile as to Defendant Whitcup, because Whitcup faces a
17 substantial likelihood of liability for his individual misconduct. Whitcup, as a
18 member of the Compliance Committee, knew of the false and misleading
19 statements regarding Acthar's efficacy and cost-effectiveness, and either knew or
20 with reasonable diligence should have known about the improper marketing
21 practices, and did nothing to stop those practices or establish systems to prevent
22 them. Defendant Whitcup was a director throughout the Relevant Period, and as
23 such had a fiduciary duty to ensure that the Company's public filings with the
24 SEC, press releases, and other public statements on behalf of the Company were
25 true. Instead, he reviewed and authorized the publication of materially false and
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1 misleading statements throughout the Relevant Period that caused the
2 Company's stock to trade at artificially inflated prices. This authorization of
3 such statements and/or failure to correct them constitutes a breach of fiduciary
4 duty, for which Defendant Whitcup faces a substantial likelihood of liability.
5

6 83. Further, if not already, several of the Individual Defendants are
7 expected to be named defendants in a federal class action in the Central District
8 of California alleging that they and the Company violated §10(b) of the
9 Securities Exchange Act of 1934 Act Rule 10b-5 when they disseminated or
10 approved false statements. The Individual Defendants are therefore interested
11 and unable to entertain a demand objectively.
12
13

14 84. A true and correct copy of this complaint was delivered to Questcor
15 prior to being filed with this Court.
16

17 **COUNT I**

18 *Against the Individual Defendants for Breach of Fiduciary Duty*

19 85. Plaintiff incorporates by reference and realleges each and every
20 allegation contained above, as though fully set forth herein.
21

22 86. The Individual Defendants owed and owe Questcor fiduciary
23 obligations. By reason of their fiduciary relationships, the Individual Defendants
24 owed and owe Questcor the highest obligation of good faith, fair dealing, loyalty,
25 due care, reasonable inquiry, oversight and supervision.
26
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1 87. The Individual Defendants violated and breached their fiduciary
2 duties of good faith, fair dealing, loyalty, due care, reasonable inquiry, oversight
3 and supervision.
4

5 88. The Individual Defendants each knowingly, recklessly or
6 negligently approved the issuance of false statements that misrepresented and
7 failed to disclose material information concerning the Company. These actions
8 could not have been a good faith exercise of prudent business judgment to
9 protect and promote the Company's corporate interests.
10

11 89. As a direct and proximate result of the Individual Defendants'
12 failure to perform their fiduciary obligations, Questcor has sustained significant
13 damages. As a result of the misconduct alleged herein, these Individual
14 Defendants are liable to the Company.
15
16

17 90. Plaintiff, on behalf of Questcor, has no adequate remedy at law.
18

19 **COUNT II**

20 *Against the Individual Defendants for Unjust Enrichment*

21 91. Plaintiff incorporates by reference and realleges each and every
22 allegation contained above, as though fully set forth herein.

23 92. By their wrongful acts and omissions, the Individual Defendants
24 were unjustly enriched at the expense of and to the detriment of Questcor.
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1 93. The Individual Defendants were unjustly enriched as a result of the
2 compensation they received while breaching their fiduciary duties owed to
3 Questcor.
4

5 94. Plaintiff, as a shareholder and representative of Questcor, seeks
6 restitution from these Individual Defendants and seeks an order from this Court
7 disgorging all profits, benefits, and other compensation obtained by these
8 Individual Defendants from their wrongful conduct and fiduciary breaches.
9

10 95. Plaintiff, on behalf of Questcor, has no adequate remedy at law.
11

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff demands judgment as follows:

14 A. Against all the Individual Defendants for the amount of damages
15 sustained by the Company as a result of the Individual Defendants' breaches of
16 fiduciary duties, aiding and abetting breaches of fiduciary duty, and unjust
17 enrichment;
18

19 B. Directing Questcor to take all necessary actions to reform and
20 improve its corporate governance and internal procedures to comply with
21 applicable laws and to protect Questcor and its shareholders from a repeat of the
22 damaging events described herein, including, but not limited to, putting forward
23 for shareholder vote resolutions for amendments to the Company's By-Laws or
24 Articles of Incorporation and taking such other action as may be necessary to
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1 place before shareholders for a vote the following Corporate Governance
2 Policies:

3
4 - a proposal to strengthen the Board's supervision of operations and
5 develop and implement procedures for greater shareholder input into the policies
6 and guidelines of the Board;

7
8 - a provision to provide for immediate management notice and
9 corrective action in the event that any trading or other activities expose the
10 Company to unacceptable exposure or risk levels;

11
12 - a provision to permit the shareholders of Questcor to nominate at
13 least two candidates for election to the Board;

14
15 - a proposal to ensure the accuracy of the qualifications of Questcor's
16 directors, executives and other employees;

17
18 - a proposal to strengthen the Company's procedures for the receipt,
19 retention and treatment of complaints received by the Company regarding
20 compliance, marketing, internal controls and auditing matters;

21 - a provision to strengthen the Questcor's insider trading controls; and

22
23 - a provision to appropriately test and then strengthen the internal
24 audit, compliance, governance and control functions.

25 C. Awarding to Questcor restitution from the Individual Defendants,
26 and each of them, and ordering disgorgement of all profits, benefits and other
27 compensation obtained by the Individual Defendants;
28

1 D. Awarding to Plaintiff the costs and disbursements of the action,
2 including reasonable attorneys' fees, accountants' and experts' fees, costs, and
3 expenses to the extent provided by law; and
4

5 E. Granting such other and further relief as the Court deems just and
6 proper.
7

8 **JURY DEMAND**

9 Plaintiff demands a trial by jury.

10 Respectfully Submitted,
11 Dated: October 4, 2012 JOHNSON & WEAVER, LLP
12

13 By: David Elliot
14 DAVID ELLIOT

15 *Attorneys for Plaintiff*
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VERIFICATION

I, Gerald Paston, hereby verify that I am a shareholder of Questcor Pharmaceutical, Inc. (the "Company"), and am ready, willing, and able to pursue this action in the hope of improving the Company and recovering damages for the Company caused by the defendants' conduct. I have reviewed the allegations made in this Verified Shareholder Derivative Complaint and to those allegations of which I have personal knowledge I believe those allegations to be true. As to those allegations of which I do not have personal knowledge, I rely upon my counsel and their investigation and believe them to be true. Having received a copy of this Complaint, having reviewed it with my counsel, I hereby authorize its filing.

Date

10/03/12



Gerald Paston

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge David O. Carter and the assigned discovery Magistrate Judge is Jean P. Rosenbluth.

The case number on all documents filed with the Court should read as follows:

SACV12- 1716 DOC (JPRx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☐ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

JOHNSON & WEAVER, LLP
 Frank J. Johnson (174882)
 David Elliot (270381)
 110 West "A" Street, Suite 750
 San Diego, CA 92101
 (619) 230-0063

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

Gerald Easton, Derivatively on Behalf of Questcor
 Pharmaceuticals, Inc.,

CASE NUMBER

PLAINTIFF(S)

SACV12 - 01716 DOC (JPRx)

v.

Don M. Bailey, Michael H. Mulroy, Stephen L. Cartt,
 David Young, Virgil D. Thompson, Mitchell J. Blutt,
 MD, Neal C. Bradsher, Stephen C. Farrell, Louis E.
 Silverman, and Scott M. Whiteup, MD,
 Defendants,

SUMMONS

-and- Questcor Pharmaceuticals, Inc.,
 a California corporation, Nominal Defendant.

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Frank Johnson, whose address is Johnson & Weaver, LLP, 110 West "A" Street, Suite 750, San Diego, CA 92101. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

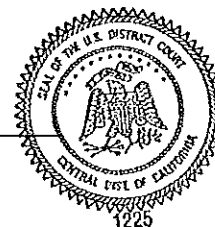
Clerk, U.S. District Court

Dated: OCT -4 2012

By: LORI WAGERS

Deputy Clerk

(Seal of the Court)



1225

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(c)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) Gerald Easton, Derivatively on Behalf of Questcor Pharmaceuticals, Inc.		DEFENDANTS Don M. Bailey, Michael H. Mulroy, Stephen L. Cartt, David Young, Virgil D. Thompson, Mitchell J. Blunt, MD, Neal C. Bradsher, Stephen C. Farrell, Louis E. Silverman, et al.	
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Johnson & Weaver, LLP, Frank Johnson, David Elliot, 110 West "A" Street, Suite 750, San Diego, CA 92101, (619) 230-0063		Attorneys (If Known)	

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:30%;">Citizen of This State</td> <td style="width:10%;">PTF <input type="checkbox"/> 1</td> <td style="width:10%;">DEF <input type="checkbox"/> 1</td> <td style="width:30%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%;">PTF <input type="checkbox"/> 4</td> <td style="width:10%;">DEF <input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input checked="" type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input checked="" type="checkbox"/> 4	Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input checked="" type="checkbox"/> 4														
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. ORIGIN (Place an X in one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge
--

V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.)
CLASS ACTION under F.R.C.P. 23: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No MONEY DEMANDED IN COMPLAINT: \$ Proof

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) 28 U.S.C. section 1332

VII. NATURE OF SUIT (Place an X in one box only.)					
OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fed Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage-Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONERS PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 IIIA (1395h) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number:

AFTER COMPLETING SACM12-01716-DOC (JPR) COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
 If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes
 If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Ashtabula County, Ohio

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
See attached.	See attached.

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties
Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): David Ellor Date 10/4/12

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

Attachment to Civil Cover Sheet
IX. Venue (b)

Don M. Bailey- Orange County

Michael H. Mulroy-Orange County

Stephen L. Cartt-San Mateo County

David Young-Orange County

Virgil D. Thompson-San Diego County

Mitchell J. Blutt, MD-New York

Neal C. Bradsher-New York

Stephen C. Farrell-Massachusetts

Louis E. Silverman-Orange County

Scott M. Whitcup, MD-Illinois

Questcor Pharmaceuticals, Inc.-Orange County